

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DERRICK BLASSINGAME

:
:
: **Case No. 1:21-cv-00395-ALM-KLL**
:
: **CHIEF JUDGE ALGENON L. MARBLEY**
:
: **MAGISTRATE JUDGE LITKOVITZ**
:
:

TRIHEALTH, INC., *et al.*,

Defendants.

ORDER

This matter is before the Court on Defendants' Motion to Strike (ECF No. 74) and Plaintiff's Motions for Leave of Court to File Responses to Defendants' Motion to Declare the Plaintiff a Vexatious Litigator (ECF Nos. 77, 78) concerning which Defendants filed an additional Motion to Strike (ECF No. 79). Defendants here request that the Court strike Docs. 72, 77, and 78 from the record because Plaintiff has not demonstrated good cause to file his sur-replies under S.D. Ohio Civ. R. 7.2(a)(2), given that the sur-replies simply provide arguments duplicative of the initial opposition briefs and were filed without leave of court.

This is not the first time that this Court has encountered this issue in the instant litigation with Plaintiff. In its Report and Recommendation dated August 15, 2022, the Magistrate Judge noted that Plaintiff filed an impermissible sur-reply memorandum to a Motion to Dismiss filed by the City of Cincinnati, Ohio; the City has since been dismissed from this matter. The Magistrate Judge informed Plaintiff that, pursuant to S.D. Ohio Civ. R. 7.2(a)(2), sur-reply memoranda are not permitted "except upon leave of court for good cause shown," which Plaintiff had neither sought nor received before filing. The provision is available on the Court's website, as the Magistrate Judge noted. The Magistrate Judge then expressly stated the following: "[a]s [Plaintiff]

is proceeding pro se, the Court will consider matters contained in this sur-reply, but future filings must comply with S.D. Ohio Civ. R. 7.2 or be stricken from the record.”

Defendants soon thereafter filed their Motion to Declare Plaintiff a Vexatious Litigator (ECF No. 65) and Motion to Vacate Doc. 57 (ECF No. 66). “Doc. 57” refers to the Court’s Preliminary Pretrial Conference Order. (ECF No. 57). Notwithstanding the explicit instruction he received from the Magistrate Judge, Plaintiff filed the following sur-replies to Defendants’ various motions without receiving leave of court: Plaintiffs Response in Support of His Motion to Strike the Defendants Motion to Vacate Doc. 57 (ECF No. 70) and Plaintiffs Reply in Support of Motion in Opposition to Defendants Motion to Declare Plaintiff a Vexatious Litigator (ECF No. 72). Plaintiff then purported to seek leave to file his sur-replies by filing the following: Plaintiffs Motion for Leave of Court to File Responses (Doc. 70), (Doc. 72), and (Doc. 76) to Defendants Motion to Declare the Plaintiff a Vexatious Litigator (ECF No. 77) and Plaintiffs Motion for Leave of Court to File an Opposition Brief to Defendants Motion to Declare the Plaintiff a Vexatious Litigator (ECF No. 78). Although these documents are styled as motions for leave, they also contain arguments constituting additional briefing in opposition to Defendants’ Motion to Declare Plaintiff a Vexatious Litigator.

Plaintiff did not stop even here. He then filed an *additional* response in opposition to Defendant’s Motion to Declare Plaintiff a Vexatious Litigator. This additional response, Plaintiffs Opposition Brief to Defendants Motion to Declare the Plaintiff a Vexatious Litigator (ECF No. 85), was amended following two prior attempted filings (ECF Nos. 81, 82). Plaintiff filed all these sur-reply briefs without receiving leave to do as required by Ohio Civ. R. 7.2(a)(2) and as explicitly instructed by the Court. At any rate, the Court finds that Plaintiff has not demonstrated good cause justifying leave to file any of the sur-reply briefs before it. The Court hereby enforces its earlier

warning and reminds Plaintiff once more that “future filings must comply with S.D. Ohio Civ. R. 7.2 or be stricken from the record.”

Therefore, Defendant’s Motions to Strike (ECF Nos. 74, 79) are **GRANTED**. The Court orders that the following documents be **STRICKEN**:

- Plaintiffs Response in Support of His Motion to Strike the Defendants Motion to Vacate Doc. 57 (ECF No. 70);
- Plaintiffs Reply in Support of Motion in Opposition to Defendants Motion to Declare Plaintiff a Vexatious Litigator (ECF No. 72); and
- Plaintiffs Opposition Brief to Defendants Motion to Declare the Plaintiff a Vexatious Litigator, as amended (ECF No. 85).

Plaintiff’s Motion for Leave of Court to File Responses (Doc. 70), (Doc. 72), and (Doc. 76) to Defendants Motion to Declare the Plaintiff a Vexatious Litigator (ECF No. 77) and Plaintiffs Motion for Leave of Court to File an Opposition Brief to Defendants Motion to Declare the Plaintiff a Vexatious Litigator (ECF No. 78) are **DENIED** and **STRICKEN**.

IT IS SO ORDERED.



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: November 1, 2022